

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, No. 03-14

Case No.: SC 04-1

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HONORABLE JAMES E. HENSON'S MOTION TO DISMISS COUNT ONE
(Paragraphs 1-4) FOR LACK OF SUBJECT MATTER JURISDICTION

The Honorable James E. Henson, by and through his undersigned attorney, and pursuant to Article V, Section 12 of the Florida Constitution, Rule 12 of the Florida Judicial Qualifications Commission Rules, and Fla. R. Civ. P. 1.140, moves the Chair of the Hearing Panel for an Order dismissing Count One (Paragraphs 1-4) of the Amended Notice of Formal Charges that has been brought against him, and as grounds therefore states the following:

FACTS

1. Judge Henson's previous term of service as County Court Judge for Orange County ended in January 2001.
2. The Florida Judicial Qualifications Commission originally brought formal charges against Judge Henson on January 6, 2004.
3. An Amended Notice of Formal Charges was filed on August 25, 2004.
4. Judge Henson took office as a Circuit Court Judge for the Ninth Judicial Circuit in Orange County in January 2003.
5. In Count One, Paragraphs 1-4 of the Amended Notice of Formal Charges (Misconduct While A Judge), the JQC alleges that, while he was a county judge, Judge Henson committed misconduct in "late 2000" and on December 18, 2000, and December

20, 2000.

MEMORANDUM OF LAW

The JQC lacks subject-matter jurisdiction over the misconduct Judge Henson allegedly committed while he served as a County Court Judge for Orange County. The original Notice of Formal Charges brought by the JQC was filed more than one year after the conclusion of Judge Henson's term of service as a county court judge.

Pursuant to Article V, Section 12(a)(1) of the Florida Constitution, the Judicial Qualifications Commission has "jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge." Art. V, § 12(a)(1), FLA. CONST. (emphasis added); *In re Hapner*, 718 So. 2d 785 (Fla. 1998).

Pursuant to FJQCR 12, the Florida Rules of Civil Procedure apply in all hearings before the Judicial Qualifications Commission. Pursuant to Fla. R. Civ. P. 1.140, the lack of subject-matter jurisdiction may be raised through a motion to dismiss at any time. Fla. R. Crim. P. 1.140(b); *Cunningham v. Standard Guaranty Insurance Co.*, 630 So. 2d 179 (Fla. 1994); *Schmauss v. Snoll*, 245 So. 2d 112 (Fla. 3d DCA 1971).

The JQC lacks subject-matter jurisdiction over the allegations in Count One (Paragraphs 1-4) of the Amended Notice of Formal Charges, because the misconduct allegedly occurred during Judge Henson's previous term as a county court judge. Pursuant to Art. 5, § 12(a)(1), the JQC only had jurisdiction over that alleged misconduct for one year following Judge Henson's service as a county court judge. See Art. V, § 12, FLA. CONST., Commentary 1996 Amendment (amendment "provided the disciplinary body with continued jurisdiction over the former judge so long as the complaint is filed within one year after the

judge has left the bench”). Since Judge Henson’s term of service as a county court judge ended in January 2001, the original Notice of Formal Charges, filed on January 5, 2004, was filed long after that one-year period.

The fact that Judge Henson commenced service as a circuit judge in January 2003 does not provide the JQC with subject-matter jurisdiction over the allegations contained in Count One. The JQC’s jurisdiction over those allegations expired in January 2002, under the plain and unambiguous language of Art. V, §12 of the Florida Constitution. There is no legal authority in either the Florida Constitution, the JQC Rules, Florida Rules of Civil Procedure or Florida case law which would serve to revive the JQC’s jurisdiction of the alleged misconduct by a judge after this one year period has expired.

WHEREFORE, the HONORABLE JAMES E. HENSON, respectfully requests that the Chair of the Hearing Panel enter an Order dismissing Count One (Paragraphs 1-4) of the Amended Notice of Formal Charges that has been brought against him.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax/mail delivery this ____ day of September, 2004 to MARK HULSEY, ESQ. and E. LANNY RUSSELL, ESQ., Special Counsel for the Florida Judicial Qualifications Commission, Smith Hulsey & Busey, 225 Water Street, Suite 1800, Jacksonville, Florida 32202 and JOHN R. BERANEK, ESQ., Ausley & McMullen, P.A., 227 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301.

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